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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-443

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

—and—

NEW YORK TELEPHONE COMPANY,

Respondents.

RESPONDENT NEW YORK TELEPHONE COMPANY'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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INDEX

PAGE

Statement of the Case 2

The Petition 5

ARGUMENT:

The Petition Should in All Respects Be Denied 8

POINT I—

The First Amendment point is insubstantial 9

POINT II—

Petitioner's statutory arguments do not warrant review 13

POINT III—

The scope of the cease and desist order is not a fit subject for review given Local 3's repeated disregard for Section 8(b)(4)(i)(ii) and its contemptuous behavior herein 17

CONCLUSION 20

APPENDIX:

Excerpts From Transcript Made Before National Labor Relations Board 21

Table of Authorities

PAGE

Cases:

Allee v. Medrano, 347 F. Supp. 605 (S.D. Texas 1972), *cert. granted,* May 7, 1973 (No. 72-1125) 11, 12

Bedding, Curtain and Drapery Workers, Local 140 v. NLRB, 390 F.2d 495 (2d Cir. 1968), *cert. denied,* 392 U.S. 905 (1968) 14

Carpenters Local 944 (Interstate Employers Association), 159 NLRB 563 (1966) 16

Danielson v. Local 3, IBEW, 82 LRRM 3114 (S.D.N.Y. Feb. 26, 1973) (not officially reported) 18-19

IBEW v. NLRB, 341 U.S. 694 (1951) 5, 9, 11, 19

ILA, Local 418 (Continental Grain), 155 NLRB 402 (1965), *enf'd,* 376 F.2d 774 (D.C. Cir. 1967) 7, 15, 16

International Association of Machinists v. NLRB, 311 U.S. 72 (1940) 17

Local 3, IBEW (Atlas Reid, Inc.), 170 NLRB 584 (1968) 19

Local 3, IBEW (Bisantz Electric Co., Inc.), 192 NLRB No. 63 (1971) 19

Local 3, IBEW (Diesel Construction and New York Telephone Co.), 205 NLRB No. 51 (Aug. 6, 1973) 7, 19

Local 3, IBEW (Hylan Electric Co.), 204 NLRB No. 38 (June 15, 1973) 19

Local 3, IBEW (New York Telephone Co.), 140 NLRB 729 (1963), *enf'd,* 325 F.2d 561 (2d Cir. 1963) 7

Local 3, IBEW (New York Telephone Co.), 193 NLRB No. 111 (1971), *enf'd,* 467 F.2d 1158 (2d Cir. 1972) 7

PAGE

Local 3, IBEW (New York Telephone Co.), 197 NLRB No. 137 (1972) 7
Local 3, IBEW (Western Electric Co. and New York Telephone Co.), 141 NLRB 888, 144 NLRB 1318 (1963), *enf'd*, 339 F.2d 145 (2d Cir. 1964) 7
Local 272, Painters (Howard H. Witney), 167 NLRB 511 (1967) 16
Local 441 (Suburban Development Co.), 158 NLRB 549 (1966) 16
Local 563, IBT (Inland Trucking), 186 NLRB No. 38 (1970) 16
Local 584, IBT (Fairway Farms), 141 NLRB 638 (1963) 16

McLeod v. Local 3, IBEW, 337 F. Supp. 31 (S.D.N.Y. 1971) 17
McLeod v. Local 3 IBEW (not officially reported), 80 LRRM 2436 and 80 LRRM 2557 (S.D.N.Y. 1971) 17

NLRB v. Construction and General Laborers' Union Local 270, 398 F.2d 86 (9th Cir. 1968) 10
NLRB v. District Council of Painters, No. 48, 340 F.2d 107 (9th Cir. 1965), *cert. denied*, 381 U.S. 914 (1965) 10
NLRB v. Express Publishing Co., 312 U.S. 426 (1941) ..7, 17
NLRB v. General Drivers and Dairy Employees, Local 563, —— F.2d ——, 76 LRRM 3002 (7th Cir. 1971), *cert. denied*, 404 U.S. 912 (1971) 19
NLRB v. International Longshoremen's Association, 332 F.2d 992 (4th Cir. 1964) 11
NLRB v. Local 1, Distillery Wkrs., 178 F.2d 584 (2d Cir. 1949) 10
NLRB v. Local 74, United Brotherhood of Carpenters, 181 F.2d 126 (6th Cir. 1950), *aff'd*, 341 U.S. 707 (1951) 5, 10

PAGE

NLRB v. Local 85, IBT, 454 F.2d 875 (9th Cir. 1972) 19
NLRB v. Local 294, Teamsters, 298 F.2d 105 (2d Cir. 1961) 10
NLRB v. Local 825, Operating Engineers, 400 U.S. 297 (1971) 6, 8
NLRB v. Marine Workers, 391 U.S. 418 (1968) 6
NLRB v. Twin City Carpenters District Counsel, 422 F.2d 309 (8th Cir. 1970) 11
NLRB v. United Brotherhood of Carpenters, 184 F.2d 60 (10th Cir. 1950) 5, 10
National Maritime Union v. NLRB, 342 F.2d 538 (2d Cir. 1965), *cert. denied,* 382 U.S. 835 (1965) 11
National Maritime Union v. NLRB, 346 F.2d 411 (D.C. Cir. 1965), *cert. denied,* 382 U.S. 840 (1965) 11

Terminiello v. Chicago, 337 U.S. 1 (1949) 11
Truck Drivers and Helpers Local Union No. 728 v. NLRB, 332 F.2d 693 (5th Cir. 1964), *cert. denied,* 379 U.S. 913 (1964) 10

Constitutional Provision:

United States Constitution
First Amendment 9, 12

Statute:

Labor Management Relations Act, as amended
Section 8(b)(4) 6, 7, 9, 10
Section 8(b)(4)(i)(ii) 17
Section 8(b)(4)(i)(ii)(B) 5, 14
Section 8(b)(4)(B) 6, 8, 13
Section 8(c) 9

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RESPONDENT NEW YORK TELEPHONE COMPANY'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

On May 3, 1973, the Court of Appeals unanimously ordered enforcement of a Board order directing petitioner, Local 3 (a repeated law breaker) not to violate the secondary boycott provisions of the National Labor Relations Act, as amended. New York Telephone Company ("Telco"), the primary employer against whom the secondary boycott was directed, was the successful charging party before the Board and an intervenor before the Court of Appeals upon the Board's petition for enforcement.

Statement of the Case

For many years, Telco contracted with outside employers whose employees are represented by Local 3 for the placing of telephone cable, terminals and iron work in buildings in New York City that are under construction or undergoing major alterations when it appears that all the construction workers in a building are members of AFL-CIO building trade unions (P.A. 18a).* On those "contract labor" jobs, the necessary material and apparatus were ordinarily delivered and unloaded by Telco employees (P.A. 18a). The electrical contractor's employees, members of Local 3, brought them into the building to the point of use and placed the cable and terminals and affixed the iron work (P.A. 18a-19a).

In July of 1971, Telco's own employees, represented by Communications Workers of America, AFL-CIO ("CWA"), struck the Company.** During the strike, deliveries were made to the job sites by management personnel, delivery work that had previously been performed by striking Telco employees (P.A. 19a). This work had not been performed by Local 3 members prior to the strike and was not assigned to them during the strike.

From the beginning of the strike in mid-July until the end of August, 1971, deliveries made by Telco management

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* Citations to the Appendix submitted by the petitioner will be noted by a "P.A." followed by the appropriate page number(s). Citations to Telco's Appendix (*infra*) will be noted by "R.A." followed by the appropriate page number(s).

** The strike in no way affected the number or scope of jobs Telco awarded to Local 3 contractors. At no point during the strike were Local 3 electricians asked to do any task that would have previously been performed by a striking Telco employee—that is, to do struck work.

personnel were generally accepted and installed by Local 3 electricians (P.A. 19a).* In September and thereafter, on several occasions at various construction sites, Local 3 electricians working for outside contractors, (*i.e.*, neutrals), refused to accept and place the materials and cable; work they, rather than Telco employees, had regularly performed prior to the strike and during its early stages (P.A. 19a, 25a-26a).

These refusals were designed to support CWA. They were, as the Board and Court of Appeals have since found, induced and encouraged by Local 3, acting through its business manager, Thomas Van Arsdale, who is "solely responsible for [Local 3's] results in the field" (P.A. 5a-7a, 27a-29a).

More particularly, Van Arsdale admitted that, on September 9, 1971, at a regular membership meeting of the Local, in the course of his official report he:

> "• • • [E]xplained to the members under what circumstances there would be strike breakers involved in the progress of a job."
>
> • • •
>
> "I explained to the members that if there were management people delivering material to the jobs which normally would have been delivered by men who are on strike, that under those circumstances those men, those management people would be acting as strike

* As the Court of Appeals noted:

"At least during the period prior to August 31, 1971, these deliveries were accepted by the contractors' employees and installed, although there were apparently one or two instances in which union members refused to accept or place the materials." (P.A. 2a)

breakers and that if an outside trucking company were employed to make a delivery that normally would have been made by men who were on strike, that under those circumstances those men would be acting as strike breakers. And if the members of Local Union Number 3 undertook to do work that normally would have been done by strikers, that those members of Local Union Number 3 under those circumstances would be acting as strike breakers."

• • •

"I made some reference to trade union principles, yes."

• • •

"• • • something to the effect that if we were • • • to be true to the trade union principles that there • • • would be no basis for men working under those circumstances. Something to that effect." (P.A. 23a)

It was these remarks made in the course of an official report at a regular union meeting which, when viewed in context, led the Board and Court of Appeals to conclude that a plain inducement to boycott had been proved—an inducement that was in no way obscured by Van Arsdale's testimony that the union "had no instructions *per se* regarding the matter", or his wink, blink and nod observation "that each member of the union would have to decide for himself how he wanted to react • • •." (P.A. 28a, R.A. 21)

All this was reinforced by the fact that on September 10, 1971, Van Arsdale met with McCall, a Telco representative, and explained Local 3's position, stating "he was sorry but they had taken a Trade Union stand that they could not be in a position of aiding and abetting strike breakers; that

he considered such work, such material deliveries to be strike breaking." (P.A. 25a) Comments similar to those made by Van Arsdale to the membership on September 9 and to McCall on September 10 were made by him from time to time in the field to various members of Local 3 (R.A. 21).

Acting on a charge filed by Telco, and relying on the facts outlined above, the Trial Examiner and the Board concluded that Local 3 violated Section 8(b)(4)(i)(ii)(B) of the Act. Given the fact that Local 3 had repeatedly ignored the proscription of that Section, particularly in matters involving Telco, a broad cease and desist order was issued. The Court of Appeals enforced that order without dissent and denied Local 3's petition for reconsideration *en banc*.

The Petition

The petitioner now tells this Court that a writ of certiorari should be issued so that several questions may be determined. We submit that none of these issues is worthy of this Court's attention.

First, Local 3 argues that substantial first amendment rights have been eroded by the Board and Court of Appeals —that the secondary boycott which resulted from Van Arsdale's speech was subject to Constitutional protection because it was the product of speech rather than picketing. This contention is neither substantial nor novel, having been disposed of by this Court in the *Langer* case, *IBEW* v. *NLRB*, 341 U.S. 694, 704-705 (1951). See also, *e.g.*, *NLRB* v. *Local 74, United Brotherhood of Carpenters*, 181 F. 2d 126, 132 (6th Cir. 1950), *aff'd*, 341 U.S. 707 (1951); *NLRB* v. *United Brotherhood of Carpenters*, 184 F. 2d 60, 62 (10th Cir. 1950).

Second, petitioner maintains that its secondary boycott was not proscribed because it was directed at Telco which had a primary dispute with CWA. In essence, Local 3 argues that although it was a secondary union having no dispute of its own with Telco, it was somehow entitled to induce the employees of the neutral contractors to cease work simply because by so doing it was aiding and abetting CWA which was engaged in a primary dispute with Telco.

To avoid enmeshing neutrals in disputes not of their own making is the very purpose of Section 8(b)(4)(B) which is designed broadly to protect the rights of the public at large as well as those of the participating litigants. See, *NLRB* v. *Local 825, Operating Engineers,* 400 U.S. 297, 302-303 (1971); *NLRB* v. *Marine Workers,* 391 U.S. 418, 424 (1968). The Court of Appeals correctly recognized that this principle was applicable here where the vindication of public rights was sought in the first instance by Telco. Its reasoning to this effect is persuasive and is supported by ample precedent. In these circumstances, review should be denied.

Third, Local 3 claims that its boycott is privileged under the "refusal to enter" proviso to Section 8(b)(4) which states:

> "Nothing contained in this sub-section (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act."

The places at which petitioner induced work stoppages were not Telco premises, were not manned by Telco employees, were not being picketed by CWA or anyone else and had for the most part already been entered upon by the electricians. They were, therefore, as the Court of Appeals held, outside the scope of the proviso which, in any event, does not permit a secondary union (Local 3) to engage in a secondary boycott. See, *ILA, Local 418 (Continental Grain)*, 155 NLRB 402 (1965), *enf'd*, 376 F. 2d 774 (D.C. Cir. 1967). None of the cases cited by petitioner on this issue deals with the fact pattern presented here and, despite petitioner's assertion, there is no conflict between Circuits (Pet. Br. at 11).

Finally, petitioner contests the broad order that was issued against it by the Board and approved by the Court of Appeals. The Board has authority to issue such an order under the Act. See, *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 435-37 (1941). And, there was more than ample basis for such an order here where it was demonstrated time and again that Local 3 had no regard for the proscription embodied in §8(b)(4). See, *e.g., Local 3 IBEW (Diesel Construction and New York Telephone Co.)*, 205 NLRB No. 51 (Aug. 6, 1973); *Local 3, IBEW (New York Telephone Co.)*, 197 NLRB No. 137 (1972); *Local 3, IBEW (New York Telephone Co.)*, 193 NLRB No. 111 (1971), *enf'd*, 467 F. 2d 1158 (2d Cir. 1972); *Local 3, IBEW (Western Electric Co. and New York Telephone Co.)*, 141 NLRB 888, 144 NLRB 1318 (1963), *enf'd*, 339 F. 2d 145 (2d Cir. 1964); *Local 3, IBEW (New York Telephone Co.)*, 140 NLRB 729 (1963), *enf'd*, 325 F. 2d 561 (2d Cir. 1963).

ARGUMENT

The Petition Should in All Respects Be Denied

Section 8(b)(4)(B) of the Act was promulgated to protect the public from having innocent neutrals enmeshed in labor disputes not of their making. As this Court explained in *NLRB* v. *Local 825, Operating Engineers*, 400 U.S. 297, 302-303 (1971):

> "Congressional concern over the involvement of third parties in labor disputes not their own, prompted Section 8(b)(4)(B). This concern was focused on 'secondary boycotts', which was conceived of as pressure brought to bear not 'upon the employer who alone is a party (to a dispute), but upon some third party who has no concern in it' with the objective of forcing the third party to bring pressure on the employer to agree to the union's demands."

By inducing its members to refuse to perform services for neutral employers (the electrical contractors) with an object of forcing or requiring those neutrals to interrupt their business relationship with Telco, the primary disputant, Local 3 participated in a classic secondary boycott.

As we shall demonstrate below, none of the points raised in the petition is worthy of review by this Court. The Court of Appeals' determination, which is persuasively reasoned and exhaustive, should be allowed to stand, thus ending once and for all petitioner's studied disregard for the secondary boycott proscriptions of the Act.

POINT I

The First Amendment point is insubstantial.

Section 8(b)(4) prohibits labor organizations from "induc[ing] or encourag[ing]" employees to engage in secondary boycotts that unlawfully involve neutrals in labor disputes that are alien to them. Such inducements and encouragements may take many forms, but usually they are made through oral and written appeals.

For over 20 years it has been apparent that such unlawful written or oral appeals are not privileged under the Constitution or Section 8(c) of the Act simply because they are spoken or written, rather than caused by picketing.*

This conclusion was cogently stated in the *Langer* case, *IBEW* v. *NLRB*, 341 U.S. 694, 704-705 (1951):

> "The legislative history does not sustain a congressional purpose to outlaw secondary boycotts under §8(c).
>
> • • •
>
> "The remedial function of §8(c) is to protect noncoercive speech by employees and labor organizations alike in furtherance of a lawful object. It serves that purpose adequately without extending its protection

* Section 8(c), which is known as the "free speech" provision of the Act, states:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

to *speech or picketing* in furtherance of unfair labor practices such as are defined in §8(b)(4). The general terms of §8(c) appropriately give way to the specific provisions of §8(b)(4).

"The prohibition of inducement or encouragement of secondary pressure by §8(b)(4)(A) [now §8(b)(4)(B)] carries no unconstitutional abridgement of free speech." (Emphasis added.)

See also, *e.g., NLRB* v. *Local 74, United Bhd. of Carpenters,* 181 F. 2d 126, 132 (6th Cir. 1950), *aff'd,* 341 U.S. 707 (1951); *NLRB* v. *United Bhd. of Carpenters,* 184 F. 2d 60, 62 (10th Cir. 1950); *NLRB* v. *Local 1, Distillery Wkrs.,* 178 F. 2d 584, 587 (2d Cir. 1949).

Given this state of the law, the Board, with judicial approval, has frequently concluded that oral and written appeals (other than picketing) violated Section 8(b)(4). See, *e.g., NLRB* v. *Construction and General Laborers' Union Local 270,* 398 F. 2d 86, 88-90 (9th Cir. 1968) (Advice from union official that "it would be best" if a union member left his job.); *NLRB* v. *Local 294, Teamsters,* 298 F. 2d 105, 106-107 (2d Cir. 1961) (Request for cooperation.); *NLRB* v. *District Council of Painters, No. 48,* 340 F. 2d 107, 110-111 (9th Cir. 1965), *cert. denied,* 381 U.S. 914 (1965) (Agent's statement that material was "unfair".); *Truck Drivers and Helpers Local Union No. 728* v. *NLRB,* 332 F. 2d 693, 696-697 (5th Cir. 1964), *cert. denied,* 379 U.S. 913 (1964); (Union president's response to member: "I can't tell you anything. You do as you please. You don't have to handle any scab freight.")

A contrary approach would emasculate Section 8(b)(4) for oral and written appeals would quickly replace picket-

ing and render otherwise unlawful secondary behavior beyond regulation. Plainly, this result was rejected by this Court in the *Langer* case, and no persuasive reason for its reconsideration has been suggested by petitioner.

Nothing in the *Tulse Hill* case, *NLRB* v. *International Longshoremen's Association*, 332 F. 2d 992 (4th Cir. 1964), even suggests a conflict between Circuits or otherwise warrants review. There, a union's political action wherein it induced its members not to work on a ship engaged in trade with Cuba was found to be privileged and, thus, not in violation of the secondary boycott proscription of the Act.

The Second, Eighth and District of Columbia Circuits have recognized that the *Tulse Hill* decision was limited to a general political question which was outside the scope of Board's jurisdiction. See, *NLRB* v. *Twin City Carpenters District Counsel*, 422 F. 2d 309, 312 (8th Cir. 1970); *National Maritime Union* v. *NLRB*, 346 F. 2d 411, 415-416 (D.C. Cir. 1965), *cert. denied*, 382 U.S. 840 (1965); *National Maritime Union* v. *NLRB*, 342 F. 2d 538, 542 (2d Cir. 1965), *cert. denied*, 382 U.S. 835 (1965). As the Court of Appeals noted in *NLRB* v. *Twin City Carpenters District Counsel, supra*, at p. 12: *Tulse Hill* involved "a general political question, outside the purview of the Board's jurisdiction. The facts in *Tulse Hill* range far afield from the instant controversy. * * * These charges relate to no political dialogue but concern a controversy completely indigenous to union activity; one affecting its own members, members of other unions and employers of both." The same distinction applies here.

Finally, petitioner quotes out of context from *Allee* v. *Medrano** and urges that it somehow forms a basis for

* 347 F. Supp. 605 (S.D. Texas 1972), *cert. granted*, May 7, 1973 (No. 72-1125).

review (Pet. Br. at 7). Neither the overly broad Texas secondary boycott law which was struck down in that case nor the facts presented there have anything to do with the nature of the inducements involved here. Indeed, the rationale of the court in *Allee* was that the statute in question was by its terms unconstitutionally vague, something that is certainly not an issue here.

Equally without value here is Local 3's reliance on *Terminiello* v. *Chicago*, 337 U.S. 1 (1949). Petitioner argues that this case extends first amendment protection to the following situation: "[A] speaker hired a meeting hall and therein urged his audience that Jews should be killed, and advocated and incited altercations between his howling audience and his critics massed outside the hall * * *." (Pet. Br. at 6) This Court, however, explicitly stated that it would not have to reach that issue because the statute under which the petitioner was convicted was unconstitutionally broad.*

Plainly, the misstatements of law noted above do not form a basis upon which certiorari should be granted.

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* The Court noted:

"The argument here has been focused on the issue of whether the context of petitioner's speech was composed of derisive, fighting words, which carried it outside the scope of the constitutional guarantees. We do not reach that question, for there is a preliminary question that is dispositive of the case.

* * *

"[The ordinance as construed by the trial court] permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand." (337 U.S. at 3-5)

POINT II

Petitioner's statutory arguments do not warrant review.

Essentially, Local 3 asserts that its inducements to boycott were not unlawful because it was a secondary union, representing secondary employees whose refusals to work (which it induced) were designed to support CWA at the various locations in question, construction projects where Telco and the electrical contractors (the secondary employers) sometimes were present at the same time at a common situs. This argument is based on the "entry upon the premises" proviso of Section 8(b)(4)(B) and the notion that a secondary boycott which affects neutrals, the public and the primary employer is not proscribed unless the affected neutral employers complain to the Board and prosecute the case (Pet. Br. at 9-12).

Both points were convincingly disposed of by the Court of Appeals.

First, with respect to the absence of a neutral complainant, the Court of Appeals concluded:

> "While §8(b)(4) may be fairly characterized as a protection of neutral employers, Congress has nowhere indicated that charges must be initiated by the third party employer. Indeed, it is the neutral employer, subjected to secondary pressure by the offending union, who may most often be unwilling to go to the NLRB. As the Supreme Court has noted in another context, a 'proceeding by the Board is not to adjudicate private rights but to effectuate a public policy.' *NLRB* v. *Marine Workers*, 391 U.S. 418, 424 * * * (1968)." (P.A. 10a)

Plainly, there is a public policy against causing secondary boycotts by means proscribed by Section 8(b)(4)(i)(ii)(B) of the Act. And, this remains the policy of our nation regardless whether the primary employer, a neutral employer or an interested bystander files the charges and, together with the General Counsel of the Board, pursues the case to conclusion. The Court of Appeals recognized this to be so and its decision to that effect is in accord with existing precedent and so obviously correct as not to merit review by this Court.*

Second, the "entry upon the premises" proviso to Section 8(b)(4)(B) has nothing to do with this case. As the Court of Appeals noted:

> "• • • for the proviso to be applicable here, the Local #3 members must be considered as *refusing to enter Telco premises* when they engaged in the work stoppages.
>
> "Such a characterization of the Union actions is absurd." (P.A. at 12a; emphasis in original)

Commenting further, Judge Smith opined:

> "It stretches credulity to call the construction project here Telco premises; indeed, a rational analysis would seem to show that construction sites were precisely the premises 'of his own employees' that are without the proviso • • • [T]he Union cannot seriously contend that, the members 'refused to enter' the construction sites. • • • *To read 'refuse to enter' as 'refuse to work' or 'refuse to handle' would constitute a gross judicial*

* See, *Bedding, Curtain and Drapery Workers, Local 140* v. *NLRB*, 390 F. 2d 495, 498 (2nd Cir. 1968), *cert. denied*, 392 U.S. 905 (1968).

> *rewriting of the proviso, which is designed to protect workers who refuse to cross primary picket lines at the premises of another employer, a situation clearly not present here.*" (P.A. at 12a-13a; emphasis added.)

Disregarding this judicial expression and relying on cases where the primary union had established picket lines at the premises of the primary employer and employees represented by a secondary union refused to cross, Local 3 tells this Court that the decision below "conflicts in principle with decisions of the Fourth, Fifth, Sixth and District of Columbia Circuits • • •." (Pet. Br. at 11, fn.) No such conclusion can be drawn for those cases and petitioner's assertion represents a shocking misstatement of the law and the Second Circuit's position vis-a-vis the other Circuits.

Indeed, the decision below is squarely in accord with the Board and District of Columbia Circuit's decisions in *ILA, Local 418 (Continental Grain)*, 155 NLRB 402 (1965), *enf'd*, 376 F.2d 774 (1967).

There, SIU had a primary dispute with a shipper, Upper Lakes. Local 418, a secondary union, had a contract with Continental Grain, a secondary employer that operated grain elevators. Upon the arrival of a vessel operated by Upper Lakes at a Continental Grain elevator, Local 418 induced Continental employees not to load the Upper Lakes vessel.

Local 418 contended before the Board that its inducement of Continental employees to refuse to perform certain duties falling within the normal scope of their employment was lawful primary activity in support of the SIU strike. Rejecting this contention, the Board stated:

> "... [I]n a case such as this one, where the labor dispute is between a primary employer with an ambulatory situs and a union other than the one which seeks to induce secondary employees to take action because of that dispute, there must be some clear and contemporaneous notice given by the primary union to the employees appealed to, and to the neutral employer at whose premises the dispute becomes active, that the labor dispute involved is between it and the primary employer. Unless such notice is given, the dispute takes on the appearance and character of a dispute between the 'inducing' union and the neutral employer over the latter's dealings with the primary employer rather than of a dispute between the primary union and the primary employer." (155 NLRB at 411)

The Court of Appeals enforced, saying:

> "Prohibiting such appeals by secondary unions is not only consistent with the expressed terms of the Act, it also seems to us highly reasonable in terms of protecting the neutral employer from potential disruptions inherent in the situation." (376 F. 2d at 780)

See also, *e.g., Local 563, IBT (Inland Trucking)*, 186 NLRB No. 38 (1970); *Local 272, Painters (Howard H. Witney)*, 167 NLRB 511 (1967); *Carpenters Local 944 (Interstate Employers Association)*, 159 NLRB 563 (1966); *Local 441 (Suburban Development Co.)*, 158 NLRB 549 (1966); *Local 584, IBT (Fairway Farms)*, 141 NLRB 638 (1963).

POINT III

The scope of the cease and desist order is not a fit subject for review given Local 3's repeated disregard for Section 8(b)(4)(i)(ii) and its contemptuous behavior herein.

Despite its own contemptuous conduct herein,* Local 3 objects to the scope of the order, asserting that it is too broad. This contention does not establish a colorable basis for review.

In *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 436-437 (1941), this Court, passing on the scope of a Board order, stated:

> "The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past."

See also, *International Association of Machinists* v. *NLRB*, 311 U.S. 72, 82 (1940).

Here, the Trial Examiner noted in his decision adopted by the Board:

> "In several prior cases involving somewhat similar situations, the Board has found that Local 3 interfered with

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* See, *McLeod* v. *Local 3, IBEW*, 337 F. Supp. 31 (S.D.N.Y. 1971); see also, *McLeod* v. *Local 3 IBEW* (not officially reported); 80 LRRM 2436 and 80 LRRM 2557 (S.D.N.Y. 1971).

business relations between Telco and contractors by conduct violative of the Act. See, *Local 3, IBEW, (New York Telephone Co.)*, 140 NLRB, *enf'd*, 325 F. 2d 561 (C.A. 2, 1963); *Local 3, IBEW (Western Electric Corp.)*, 141 NLRB 888; *Local 3, IBEW (New York Telephone Co.)*, 193 NLRB No. 111 (1971). It is seen that all of these decisions are within the past 8 years, and one very recent.

"In these circumstances it would appear that further conduct of the same or similar nature may be anticipated and an order broad enough to cover such recurrence is appropriate. Such an order will therefore be recommended." (P.A. at 31a)

And, the Court of Appeals concluded:

"In view of the long history of secondary pressure brought by Local #3 against Telco, * * * and the fact that the Union has already been found in contempt of court for continuation of its secondary activities here, a broad order was an appropriate exercise of the Board's discretion." (P.A. 13a)

Significantly, after the petition for enforcement was filed with the Court of Appeals herein, Local 3 conducted another secondary boycott in a dispute with Telco, once again asserting that it was not responsible for the so-called "individual action" of its members. The District Court issued a preliminary injunction, commenting: "Respondent's contention that concerted action was an individual assertion of liberty, rather than a job action or a secondary boycott, is foolish and fanciful, bearing no relation to reality." *Danielson* v. *Local 3, IBEW*, 82 LRRM 3114, 3117 (S.D.

N.Y. Feb. 26, 1973) (not officially reported). Subsequently, a Board cease and desist order was issued. *Local 3, IBEW (Diesel Construction and New York Telephone)*, 205 NLRB No. 51 (Aug. 6, 1973).

Finally it should be noted that petitioner's studied disregard of the Act's secondary boycott prohibition has not been limited to disputes involving Telco. See, *Local 3, IBEW (Hylan Electric Co.)*, 204 NLRB No. 38 (June 15, 1973); *Local 3, IBEW (Bisantz Electric Co., Inc.)*, 192 NLRB No. 63 (1971); *Local 3, IBEW (Atlas Reid, Inc.)*, 170 NLRB 584 (1968).

Given these circumstances, where Local 3 has repeatedly treated the secondary boycott proscriptions of the Act as a nullity, the Board's broad order is plainly appropriate. See, *IBEW* v. *NLRB*, 341 U.S. 694, 706 (1951); *NLRB* v. *Local 85, IBT*, 454 F.2d 875 (9th Cir. 1972); *NLRB* v. *General Drivers and Dairy Employees, Local 563*, —— F.2d ——, 76 LRRM 3002 (7th Cir. 1971), *cert. denied*, 404 U.S. 912 (1971).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should in all respects be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

Excerpts From the Official Transcript Made Before the National Labor Relations Board

(p. 143:)

Q. You have told us of three occasions when you have discussed the telephone company strike problems with members of your local. Will you tell us about some others? A. I don't recall any specific other circumstances.

Q. But there were other discussions, were there not? A. Well, it's logical to assume that there were other discussions because I am in the office every day and I am coming in contact with people and members of Local Union Number 3 every day, and you're talking about a period of some thirty or sixty, thirty or forty days, and it's very logical that there must have been discussion at the same time. It's very logical that I cannot recall specifically what they were and with whom.

* * *

(p. 144:)

Q. Mr. Van Arsdale, in your discussions with members of your local with respect to the telephone strike problem, did you express your views? A. The only recollections I have in regard to that are that I pretty much confined myself being aware of the technicalities of the law, I confined my remarks to a description of what would constitute strike breaking activities, and also I would have indicated in such discussions that each member of the union would have to decide for himself how he wanted to react to a situation. And that the local union had no instructions per se regarding the matter.